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Jim Wright

The Honorable ~~Bill Alexander~~ Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

Dear ~~Mr. Alexander:~~ Mr. Speaker:

We write to advise you of the Administration's strong opposition to the "Anti-Stonewalling Act of 1988" amendment, H.R. No. 100-861 at 54-55, which you propose to offer to the omnibus anti-drug legislation. We believe that this amendment both infringes on the President's constitutional responsibilities and is profoundly unwise as a matter of policy. Because the need for a tough, effective drug law is paramount, the Administration will willingly work with Congress to disseminate information concerning illegal drug trafficking in appropriate cases. We believe, however, that legislation of this sort will not help and, in fact, will prove to be counterproductive.

The amendment would require any executive branch officer, employee, or member of a uniformed service obtaining information about "illegal foreign drug activities" to forward such information promptly to his agency head. Section 11002(a), (f). The agency head would be required to furnish this information to law enforcement agencies specially designated by the President, and, upon request, to any committee of Congress or the Comptroller General of the General Accounting Office. Section 11002(a)(1), (a)(2), (b). Disclosure may be withheld from committees and designated agencies, but not the General Accounting Office, only if the agency head makes the personal determination that disclosure may jeopardize a foreign intelligence source or activity, law enforcement activity, or adversely affect national defense or security. Section 11002(c). Section 11002(c) specifies that the agency head cannot refuse disclosure to the GAO on any grounds, without acknowledging that this information may be withheld for reasons within the President's constitutional privilege to protect national security, defense, law enforcement and other sensitive executive branch information. Even putting this exemption for the GAO to one side, if the President withholds information from Congress based on the grounds specified in the statute, he must submit to Congress a statement of the reasons for the decision. Section 11002(e).

A. Constitutional Objections

The proposed amendment impermissibly encroaches on the President's constitutional power, as head of the unitary

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executive, to coordinate and supervise his subordinates. While Congress makes law, the President alone is assigned the constitutional authority to determine how these laws are faithfully executed. This includes the manner in which subordinates report information to principal officers, and the manner in which that information is disseminated among agencies within the Executive branch in the process of executing these laws.

Second, this amendment may be read as infringing on the President's power to protect information within the executive branch in the exercise of his constitutional responsibilities. The amendment contemplates that information can be withheld from a committee of Congress only if it meets the specified criteria in section 11002(c). Congress, however, cannot by statute limit the constitutional grounds available to the President to protect information. For instance, section 11002(c)'s criteria are clearly deficient in that they do not permit information to be withheld when necessary to protect the integrity of the deliberative process within the executive branch. Even more disturbingly, the amendment also apparently contemplates that information cannot be withheld from the GAO on any ground. The President, however, has the same obligation to protect the confidential information in the exercise of constitutional responsibilities with respect to the GAO as with respect to congressional committees.

B. Policy Objections

By permitting all committees of Congress to obtain information on demand pertaining to foreign drug activities, the amendment would effect a radical departure from present practice concerning narcotics intelligence. First, it would disturb the understanding between the President and Congress that oversight of intelligence matters be confined to the two intelligence committees. Second, all committees would have access to raw, unevaluated intelligence reports, which at present are not supplied even to the intelligence oversight committees. Moreover, GAO's right of suit raises the prospect of court actions between the two branches concerning some of the most sensitive information in the possession of the United States. Rather than helping to dampen future conflict, the amendment will serve to sharpen and institutionalize conflicts which have been, and should continue to be, harmoniously resolved by the political branches on a case-by-case basis.

These alterations are particularly unwarranted given current law. Pursuant to Title V of the National Security Act, the Director of Central Intelligence and the heads of the various agencies in the intelligence community are required to keep the committees "fully and currently informed" of intelligence matters. In fulfilling this obligation, the executive branch

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routinely provides the oversight committees with a substantial portion of the narcotics intelligence information sought under this amendment.

We are also concerned that the inter-agency reporting requirements imposed by the amendment will duplicate and ultimately disrupt the longstanding, carefully crafted administration mechanisms for disseminating foreign drug information to law enforcement agencies by other agencies. Finally, the ambiguity of the amendment threatens to undermine its intent. All federal employees, whether operating inside or outside the United States, would be subject to the reporting requirement. This is unrealistic unless the information that triggers a reporting obligation is very limited, i.e,. to involvement of heads of states or foreign governments involved in drug activities. Nor is it clear whether the illegality that triggers the reporting requirement refers to domestic laws, foreign laws, or both.

We appreciate the opportunity to provide you with our views. We share the Congress' desire to stem illegal drug activity, foreign and domestic, but the proposed amendment will not advance that objective, and that reason alone is sufficient to justify our strong opposition to it.

The Office of Management and Budget advises that the submission of this report is in accord with the program of the President.

Sincerely,

William H. Webster
Director
CIA

Dick Thornburgh
Attorney General

CC: Honorable Robert Michel

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